

The Confirmation Process and a Senatorial Norm:
Historical Quantification and Analysis of the Senate Blue Slip Process

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Abstract

Since the early 1900s the senatorial norm of the blue slip has played a role in the confirmation process of federal district and appeals court judges. However, historical analyses of this norm have been largely descriptive in nature (Denning 2002; Sollenberger 2003b; Binder 2007) or have not explicitly gathered data on the actual blue slips in existing quantitative work (Binder & Maltzman 2002). This project offers an empirical analysis of the blue slip's impact on the duration of the confirmation process. Whereas previous work has focused on the use of the blue slip as a negative tool to defeat or delay a nominee, here it is tested whether the blue slip has also functioned as a positive tool to support a nominee. This analysis was accomplished by cataloging the blue slips found in the judicial nomination files from 1953 to 1958 on a five-point scale that not only reflects whether the senator was supportive of or objecting to a nominee, but also the amount or strength of that support. Three stages of the confirmation process are examined – time to hearing, committee vote, and floor vote. Finally, a theoretical explanation for why the blue slip underwent a modification in its use in 1956 is briefly examined.

Introduction

The United States Senate has a constitutional role in the appointment of judges in the federal court system. The president nominates and appoints with advice and consent of the Senate. Senators formally exercise this power through votes on a nominee on the floor of the Senate or in committee if they are a member of the Senate Judiciary Committee. More informally, since the 1800s, Senators of the President's party have provided advice to the President on appointments that occur in their state or for nominees from their state via senatorial courtesy. For Senators not of the same political party as the President, there is also a tradition of a weaker consultative role, the blue slip (Rutkus 2008, 4).

The actual use of a "blue slip" policy dates back to at least 1917 (Sollenberger 2003b; Binder 2007). The blue slip policy essentially ensures at least a consultative role regardless of political party as each home state senator is sent a query asking for their opinion and information on the judicial nominee from their state. The queries were literally sent on blue paper and thus the nickname, "blue slip." The chair of the Judiciary Committee determines the way in which the blue slip is used and interpreted and there have been policy differences over time.

We are studying the period from 1953 to 1958. Republican Dwight D. Eisenhower was president during this time. He took office on January 20, 1953, and remained in office until January 20, 1961. During his presidency he made 213 district and circuit court nominations, 183 of which were confirmed. There were very slim congressional majorities in the Senate during this time period. The 83rd Congress was closely divided along party lines and was in office from 1953-1955. The Republican Party was in the majority with 48 seats, the Democrats held 47 seats and there was one Independent when the Senate convened. During the 83rd Congress, nine senators died and one resigned (see Secretary of the Senate 2008). By the end of July 1953, the party balance was 46 Republicans, 47 Democrats, 1 Independent, and 2 vacancies. In January 1954, the party balance was 47 Republicans, 48 Democrats, and 1 Independent. By June 1954, the Republicans again had the majority with 48 Republicans, 47 Democrats, 1 Independent, and 1 vacancy. The 84th Congress convened from 1955-1957 with a Democratic majority of 48 seats to the Republicans 47 seats with 1 Independent, while the 85th Congress from 1957-1959 had 49 Democrats, 47 Republicans, and 0 Independents.

Senator William Langer from North Dakota was the Republican chairman of the Judiciary Committee from 1953-1955. Senator Harley M. Kilgore from West Virginia was the Democratic chairman from 1955 until his death in 1956. Finally, Senator James O. Eastland from Mississippi was the Democratic chairman from 1956 until he retired in 1978. Prior to Eastland's chairmanship, and thus for the first four decades of blue slip policy, a negative or non-returned blue slip did not kill a nomination (Sollenberger 2003b, 9). That is, committee hearings proceeded, often with a floor vote to follow. This changed with Eastland's chairmanship. A negative or non-returned blue slip meant that a hearing would not be held. Since the end of Eastland's chairmanship of the Senate Judiciary Committee, the policy of whether a negative or non-returned blue slip halted proceedings has varied and subsequent controversy has been the subject of political debate (Rutkus 2008, 12 and 63).

Literature Review

The federal judicial confirmation process has generated a great deal of scholarly interest, as it is the arena in which two branches of the United States government interact to fill the third. This has resulted in hundreds of studies utilizing various approaches, focuses, and methods of analysis in their attempts to best explain the dynamics of staffing the federal bench. For example, Goldman's (1997) rich descriptive work provides a seminal account of the partisan, personal, and policy motivations presidents utilized in selecting nominees, while Cameron, Cover and Segal

(1990) provide a sophisticated statistical model to explain senatorial voting behavior patterns for Supreme Court nominees.

Blue slips were barely mentioned or alluded to in most early works on the confirmation process (e.g. Harris 1958, Chase 1972), however research and study of the blue slips has become more prevalent and has generated an ever increasing knowledge about their operation. Sollenberger (2003b) charts the structural and operational changes the blue slip has undergone from its inception, including those changes that allowed a negative blue slip to bring an automatic halt to committee action. He suggests that the Judiciary Committee changed its traditional blue slip policy in 1956 because a full Senate rejection of an objected to nominee was no longer certain. More recently, Binder (2007) documents the origins of the blue slip and considers four competing explanations: interparty competition for political advantage, interparty competition based on electoral uncertainty, intraparty competition, and managing uncertainty. She concludes that managing uncertainty is the strongest explanation.

Experts' understanding of why senators have objected to nominees has also evolved. Harris (1958) states that early objections to a nomination under senatorial courtesy (the precursor to the blue slip) were generally made because the senator had another candidate they wanted to see receive the nomination or their advice on the nomination had been ignored. Later, Slotnick (1980) found through historical research and interviews with sitting senators that the "classic" use of a blue slip objection was to delay, and not defeat, a nomination. The motivation for delay was to further investigate the nominee and negotiate on the nominee. Slotnick states that "some senators have even suggested that the advice and consent power be utilized as a bargaining device to obtain broad policy concessions (1980, 65). Finally, it is now suggested that modern senators see the blue slip "as a means to defeat, not merely delay, a nominee; and perhaps prevent the nomination from being made in the first place" (Denning 2002).

While the qualitative analyses of the blue slips have increased, most quantitative analyses of the confirmation process do not take blue slips into account. This is in spite of evidence in other analyses that indicate blue slips have an impact. For example, many studies find important roles for the Judiciary Committee Chairs and the makeup of the Committee in predicting senatorial delay with regards to the confirmation process (Binder and Maltzman 2002; Harlley and Holmes 2002; Martinek, Kemper and Van Winkle 2002). These senatorial actors are intrinsically tied to the blue slip. Further, Songer (1982) and Giles, Hettinger and Peppers (2001) find judicial outcomes and behavior are more strongly linked to the president where senatorial courtesy is not in play, a norm of the Senate institutionalized as the blue slip. In short, senatorial courtesy is only in play for senators of the president's party. The fact that senatorial courtesy has been shown to have an effect is all the more reason to examine more closely the blue slip. Bell (2002) finds no statistically significant link between a nominee having a home-state senator from the president's party and whether he or she receives a speedier confirmation. Such a finding may indicate the need for more party neutral explanations of delay in confirmation rates, such as the blue slip. However, it is important to note that Bell considered all circuit court nominees to be "orphans" (i.e., not having a home-state senator from the president's party) because they are not identified with a single state, a coding we find inconsistent with how most judicial scholars view circuit court nominations.

Finally, Binder and Maltzman (2002) do attempt to create a variable to capture a nominee's *potential* to receive a negative blue slip, but they do not have any direct evidence of whether a nominee was *actually* blue slipped. All of these studies seem to indicate the need for a more thorough exploration of what, if any, impact the blue slip has on predicting delay. Taking a wider view of whether there is both negative and positive impacts of a blue slip is also worthy of investigation. Further, a thorough quantitative analysis can only serve to reinforce and clarify the qualitative research of the blue slip.

What is a Blue Slip and How is it Used?

Article II, section II of the Constitution defines the relationship between the President and the Senate in the appointment of federal judges. It states that, “[The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint...Judges of the Supreme Court, and all other Officers of the United States.” As Burbank notes, “The text...is indeterminate as to the proper role of the Senate in giving ‘Advice and Consent’” (2002, 24). However, it does establish “an expectation that the president will actively seek the guidance of senators in making appointments” (Denning 2002, 222).

This expectation manifested itself in the very first session of Congress. President George Washington’s nominee for a naval officer in Georgia was withdrawn when the nominee was not the candidate favored by the senators from Georgia (Harris 1958). Thus began the concept of “senatorial courtesy” in which the Senate would decline to confirm a nominee unless the home state senator(s) of the president’s party approved. This concept eventually became a regular practice with regards to judicial nominees. Specifically, scholars date this as a regular practice by 1840 (Harris 1958, Slotnick 1980). It is the norm of senatorial courtesy that later evolves and is institutionalized as the blue slip.

Although it has never been a formal rule of the Committee, the blue slip of paper has been a regular part of the Senate Judiciary Committee since at least 1917 and possibly earlier (Sollenberger 2003b, Binder 2007). Since that time, both home state senators of a federal judicial nominee to a district or circuit court, regardless of the senators’ party, have received a blue colored form from the Chair of the Judiciary Committee who sets the blue slip policy during each session of Congress. This form invites the senators to provide their opinions and comments on the nomination within a week.¹ A senator may then sign and return the blue slip with support for the nominee or may return the blue slip with an objection to the nomination. Also, a senator may not return the blue slip at all. This failure to return the blue slip has signaled, depending on the Chairman of the Committee, that the senator either does or does not have an objection to the nomination (Sollenberger 2003b, Rutkus 2008).

How the Chairmen of the Committee have handled negative blue slips has varied throughout its history². When a negative blue slip is received or an objection is raised by not returning the blue slip, “the chairman may take the following actions on the nominee: (1) stop all committee proceedings; (2) move forward but give added weight to the unfavorable review; or (3) proceed without notice of the negative review” (Sollenberger 2003b, 4). In more recent times, Chairmen have also held differing policies on whether a single senator’s objection to a nominee may stop the confirmation process or whether both home state senators must object (Sollenberger 2003b, Slotnick 2006). It is important to note that because the blue slip is an informal rule of the Committee, the Chair has a great deal of discretion in the administration the blue slip. Indeed, in our examination of nomination files, it was noted that some chairman regularly enforced the seven-day period to return blue slips while others did not. Further, some chairman persistently followed up if a blue slip was not returned by calling the senators office.

From 1917 to 1955 a negative blue slip “did not give a Senator an absolute right to block a judicial nomination and prevent committee action...Instead, a Senator’s negative assessment of a nominee was meant to express to the committee his views on the nominee so that the chairman would be better prepared to deal with the review of the nomination” (Sollenberger 2003b, 8-9). However, most nominations objected to by a senator received an adverse recommendation from

¹ Only about half the blue slips are stamped by the chairman’s office with a date of return. There is not much variation in the time taken to return blue slips. Even when a nomination takes a long time, the blue slips are returned relatively quickly. The chairman does request within one week. The nominee’s files often show follow up by the chairman’s secretary if the blue slip is not returned within one week.

² For an example of a negatively returned blue slip, see Figure 1

the Judiciary Committee and were later rejected by the full Senate (Sollenberger 2003b). Further, the failure to return the blue slip meant that the senator had “no objection” to the nominee.

This policy changed, however, in 1956 when Senator James O. Eastland became Chair of the Committee. Senator Eastland chaired the Committee until 1978 and during his tenure “blue slips were handled as absolute vetoes by Senators” over judicial nominations (Sollenberger 2003b, 9). Non-returned blue slips would also be treated as an objection to the nomination. Additionally, a negative blue slip (returned or not) no longer meant a nomination would simply be reported adversely out of the Committee. It now meant that the Committee would halt all action on the nomination (Sollenberger 2003b). Despite this policy shift in 1956, a review of the blue slip’s usage showed that the Chairs, with regards to all senators, handled it fairly and evenly for roughly the first sixty years of its existence.

After 1978, the variation on blue slip policies has grown. Some chairs have required negative blue slips from both home state senators to block a judicial nomination while others have required only one. Some have treated a non-returned blue slip as equal to a negative blue slip while others have treated it as the senator having “no objection” to the nominee. Further, the stated and practiced blue slip policies of the Judiciary Committee Chairs were often different and at times contradictory (Sollenberger 2003b; Campisano 2009).

Areas of Theoretical Interest Concerning the Blue Slip

At the conclusion of her work on the origins of the blue slip, Sarah Binder raises an interesting query as to the evolution of the blue slip from an advisory tool to a type of senatorial veto. She notes, “Why and how the blue slip (as an informal practice) took root and became tantamount to a veto, of course, remains to be explained” (Binder 2007, 15). Meanwhile, Sollenberger’s research, as discussed above, shows that this change in the blue slip’s application occurred during the chairmanship of Senator James O. Eastland. He hypothesizes that the blue slip was modified to stop a nominee at the committee level because rejection by the full Senate was no longer guaranteed due to a decrease in the observance of the “personally obnoxious” standard (Sollenberger 2003b). These interesting theoretical questions and ideas directly cut across the era within which the research for this paper was conducted. Although there was not enough statistical data available to quantitatively analyze the use of the blue slip pre- and post-Eastland, we feel that our in-depth examination of the this time period and its actors leave us in a unique position to attempt to offer our own hypothesis as to why Eastland altered a practice that had been in operation for at least 40 years.

First, an initial concern with Sollenberger’s hypothesis is it does not seem to be supported by other historical accounts of the era. Joseph Harris (1958) gives accounts of the rejection of district judges in 1950 and 1951 by the full Senate due to objections raised by the home-state senators. It appears then, that the practice of nominees being rejected by the full Senate was still operative within five years of the change instituted by Eastland. Further, observance of the so-called “personally obnoxious” standard had been in decline since at least 1930 (Harris 1958; Chase 1972), leading one to believe that more recent events better account for the shift in the blue slip norm. Finally, the distribution of political power and policy factors may offer a fuller explanation of the change in the blue slip and that this explanation is supported by theories of how Congressional institutions change.

Political and social theories on how institutions evolve offer a nice starting point for the examination of why a particular change occurred in a senatorial norm such as the blue slip. Edward Sait (1938) noted that inherited institutions could change in character given shifts in the political environment. Furthermore, Social Learning Theory sees that “the deliberative nature of the committee system... facilitates the informed and methodical reconstruction of paradigmatic understanding in response to crises” (Dodd 2001). Hence, shifts in the political environment or a crisis arising (and it is assumed here that crisis means “political crisis” and not a crisis such as a

natural disaster) are good indicators of why an institution changed. The question then is, did such events take place at the time of the blue slip's evolution?

The answer must be an unequivocal, "yes." The 1950s saw the political environment drastically shift, especially with regards to Civil Rights issues and desegregation. Also, the 1954 Supreme Court decision in *Brown v. Board of Education*, 347 U.S. 483 (1954), could easily be viewed as a crisis event as it turned desegregation from a background concern into a politically and socially salient issue at the forefront of national debate. In particular, desegregation became a highly salient issue for southern senators like Senator Eastland. Further, the Supreme Court's decision in *Brown* had the added effect of raising the profile on the federal courts' ability to implement social and legal change in America.

These legislative abilities, given the saliency to them of the policy changes being implemented, southern senators took particular note of. As The Southern Manifesto noted, the southern congressmen who signed it were not just against the Supreme Court's ruling, but also against the general "trend in the Federal Judiciary undertaking to legislate." Therefore, one could see how policy concerns, brought on by the shift in the political environment at the time, led to the "why" of the blue slip becoming tantamount to a veto. Pro-Segregation southern senators, of whom Eastland was one, wanted to ensure desegregationist judges were not confirmed to federal judgeships in their states. Further, as Chase (1972) notes, senators from other parts of the country could not afford politically to vote against a nominee just because he was not a segregationist. Hence, the only way southern senators could defeat a nominee they objected to was at the committee level.

Policy concerns, however, do not provide the complete picture on the blue slip's evolution. The existence of divided government also plays an important role in the explanation. For, if the majority of the Senate and president were of the same party, alteration of the blue slip might not have been necessary or considered in the first place.

The processes of judicial nomination and confirmation, with regards to senatorial-presidential interaction, operate under two norms: 1) senatorial courtesy, a pre-nomination norm in which the president consults with home-state senators of his party before making a nomination and; 2) the blue slip, a post-nomination norm utilized after the president has sent the nomination to the Senate. If the presidency and the Senate are of the same party, the majority party senators will interact with the president before a nomination is made, often selecting the nominee themselves (at least during this time in history). The blue slip for senators of the president's party, then, is generally a formality and only used to object when they feel their advice has been ignored. Senators not of the president's party, however, usually do not receive the same type of pre-nomination selection or clearance privileges. Their only ability to effectively make sure the president does not make objectionable nominations to their state is via the blue slip. Hence, we would only expect to see this type of shift in the post-nomination norm if the president and majority of the Senate were of opposite parties.

The distribution of political power between the White House and the Senate also appears to have influenced recent changes in the blue slip policy. In 1979, Senator Edward Kennedy, with a fellow Democrat as president, modified the blue slip policy so that a home-state senator's objection to a nominee did not automatically stop committee action as it did under Eastland (Slotnick 1980; Sollenberger 2003b). More recently, it is believed that as chairman beginning in 1994, Senator Orrin Hatch utilized one blue slip policy during President Clinton's tenure and another when George W. Bush became president in 2001 (Leahy 2003; Sollenberger 2003b; Slotnick 2006; Binder 2007). These examples serve to highlight the important role political factors can play in changes to the judicial confirmation process.

Although not conclusive, the emergence of a policy crisis that shifted the political environment and the diffusion of political power seem to offer a compelling explanation of why the blue slip policy experienced a shift in 1956. More specifically, the rise of desegregation and the federal judiciary as salient issues with a large bloc of senators, and one of those senators

holding the chairmanship of the requisite committee, as well as the president's party not controlling the Senate, created the opportunity to and reasons for the blue slip policy modification. Further, the relative stability that southern senators enjoyed with their electorate and the more liberal civil rights beliefs of even subsequent Democratic presidents, allowed for the maintenance of this alteration until Eastland's retirement in 1978.

A Positive Role for the Blue Slip?

As has been shown, the historical perception and study of the blue slip has been centered on their use as a negative force by which senators may delay or defeat a nominee (Slotnick 1980; Binder & Maltzman 2002; Denning 2002; Sollenberger 2003a; Sollenberger 2003b; Rutkus 2008). A senator from the nominee's home state could halt or slow committee action on a nominee by not returning the blue slip or returning it with an objection (Sollenberger 2003b; Binder 2007; Rutkus 2008). Figure 1 provides an example of a negative blue slip. If the objecting senator(s) stood firm against confirmation, the nominee was generally defeated either by a vote of the full Senate or by simply not being reported out of the Judiciary Committee (Sollenberger 2003b).

However, these studies and perspectives have paid little or no attention to those blue slips returned without objection. That is, of the vast majority of blue slips which are returned without objection (approximately 97% of our data set), what effect, if any, do these have on the confirmation process? This initial question invariably led us to many others. Are there differences between these "positively" returned blue slips? Could returned blue slips have an impact on the length of time between nomination and the different stages of the confirmation process? Could the blue slip, as well as being a tool for delay and defeat, also have a positive impact?

The first indication that the non-negatively returned blue slips may carry a varying, positive influence on the confirmation process comes from the blue slips themselves. Upon examination of the Judicial Nomination files at the National Archives, we found home-state senators offering a fairly regular range of comments about nominees on their returned blue slips. Some senators stated they had "no objection" to the nominee (see Figure 2). Others simply wrote, "approve" or "OK" in the space provided (see Figure 3). Many senators, however, took the opportunity to write a sentence or paragraph (or, in some cases, attach a separate letter) offering the nominee praise, explaining their support, and/or recommending speedy confirmation. For example, see Figure 4, which reproduces the original blue slip returned by Senator Spessard L. Holland of Florida in 1955 in regards to the nomination of Walter L. Jones to be on judge on the 5th Circuit Court. Senator Holland replies, "Mr. Jones is a scholarly lawyer of very high type, personally and professionally...I think he will make an excellent judge."

It is this latter group of senators' blue slips that clearly seem to indicate that, at the very least, the senators had some expectation that these positive/supportive statements would have an impact with the Judiciary Committee Chairman. This hypothesis of a positive aspect of the blue slip may further be supported by the volume and regularity by which senators offered nominees a strong recommendation. As Table 1 shows, over 47% of all blue slips catalogued in our data set offered the nominee this type of strong support.

Table 1
Blue Slips from 1953-1958
Cross-Tabulations (w/Total Percents)

<i>Support Score</i>	<i>Dems</i>	<i>Reps</i>	<i>Total</i>
Not Returned	8 (3.14%)	4 (1.57%)	12 (4.72%)
Objection	4 (1.57%)	3 (1.18%)	7 (2.76%)
No Objection	41 (16.14%)	5 (1.97%)	46 (18.11%)
Approve	19 (7.48%)	50 (19.69%)	69 (27.17%)
Strong Support	38 (14.96%)	82 (32.28%)	120 (47.24%)

This support was also fairly regular between the three Congresses from which we collected data, with 40% to 54% of blue slips indicating strong support for the nominee. This information indicates that the practice of offering nominees varying levels of support was not simply limited to a handful of senators, but was pervasively used throughout the Senate and carried over from session to session. In our empirical analysis, we focus on the impact of the blue slips on the time between nomination and different stages of the confirmation process for nominees with approval of the home-state senator(s).

Data & Methods

The critical blue slip data at the heart of our analysis was collected by the author from the National Archives and Records Administration in Washington, D.C., Records Group 46 of the United States Senate, 83rd-85th Congresses, Records of Executive Proceedings, Nomination Files, Judiciary Committee, Blue Slips, 1953-1958. All blue slips were scanned and initially coded into categories of not returned, objection, no objection, approve and strong support.

We measured the effect of all the independent variables on three dependent variables: the length of time in days between the nomination being received by the Senate and the first committee hearing, the committee taking action on the nomination, and the Senate taking final action on the nomination (either confirmation or return). Data on nomination, hearings, committee action and confirmation were collected from the *Journal of the Executive Proceedings of the Senate* and the Executive Calendars of the Senate Judiciary Committee. Any nomination allowed to expire sine die was considered as not confirmed and as the final action of the Senate on that nomination. Any renomination of a nominee was handled as a separate event while including a control variable for these cases.

There were 147 nominations made between 1953 and 1958. Of these, nine were post May 1958 and outside of the dates we had access to at the time of our data collection in the spring to 2008. Further, four nominations were judges from the District of Columbia and not subject to the blue slip. Finally, we did not find files at the National Archives pertaining to seven of the nominations. There does not appear to be a systematic reason for the lack of files on these seven nominees. Therefore, we have 127 district and circuit court nominations available for analysis.

Our independent variables are categorized into the following groups of factors: blue slip, contextual, and political. They were coded to see what effect, if any, each had on the duration of time between nomination and confirmation, and the duration of time a nominee spends in the various stages of the confirmation process. Each variable was coded for the 127 available district and circuit court nominees from January of 1953 to May of 1958.

Blue Slip Factors

Blue Slip Support Score – A nominee facing objection from a home-state senator should be defeated or face long delays until the problem is solved. Furthermore, as noted above, senators may also have an interest in helping nominees they support gain confirmation. Therefore, one might expect positive support for a nominee by a home-state senator to increase the likelihood of confirmation and decrease the duration of the confirmation stages and the confirmation process overall. The opposite would be expected if the home-state senator(s) objected to a nominee.

Measurement scales were created based on whether or not a senator returned the blue slip, the senators' responses on returned blue slips, and historical descriptions of the blue slip's use in order to test whether the level of support a nominee receives has any affect on these dependent variables. The first scale created was a five-point scale placing the blue slips on a continuum of responses: not returned (0), objection (1), no objection (2), approve (3) and strongly approve (4). However, two problems arose from this method. First, according to the relevant literature (Sollenberger 2003b), not returned blue slips had a distinct meaning depending on the Judiciary Committee Chair. Second, because there were two senators for each nominee, there were statistical difficulties in accurately measuring which support score, or what type of support score, contributed more to mitigating or increasing delay.

To solve the first problem, an attempt was made to place all non-returned blue slips into categories. This was done utilizing the current general understanding of what non-returned blue slips meant to various chairmen of the Judiciary Committee. Prior to Senator Eastland, a non-returned blue slip was understood to mean the senator had no objection to the nominee. In fact, Chairman Knute Nelson (R-MN) had the following statement added to the blue slip in 1922: "Under a rule of the Committee, unless a reply is received from you within a week from this date, it will be assumed that you have no objection to the nomination" (Sollenberger 2003b). Therefore, all non-returned blue slips prior to Senator Eastland assuming the chairmanship in March of 1956 were coded as no objection. All those after were coded as an objection. Here, the five-point scale from before collapses into a four point scale with objection at one end (0) and strongly approve at the other (3).

To resolve the second issue, a variable was created to indicate the number and type of blue slip support (or objection) a nominee received. Hence, each nominee could have a variable of 0, 1, or 2 for any of four categories: number of negative blue slips received, number of no objection blue slips received, number of approve blue slips received, and number of strongly approve blue slips received. Finally, there were concerns that the difference between "approve" and "strongly approve" blue slips could be an arbitrary distinction. Further, the aim of the researcher is to examine any possible relationship between "positive" blue slips and other blue slips. Therefore, approve and strongly approve were collapsed into one category leaving us with three independent variables upon which to measure their effects on delay.

Contextual Factors³

Divided Government – During times of divided government between the Senate and the presidency, the opposition has a great deal of control over the president's nominations to the federal bench. An opposition Judiciary Committee Chair can easily delay nominations by not

³ Neither race nor gender were considered in our analysis as no women or African-Americans were nominated during the time period under consideration. Similarly, the ABA rating did not become a formal part of the selection process until 1956 (Goldman, 1997) and our analysis pre-dates this time. Likewise, Binder & Maltzman (2002) find nominee quality, as measured by ABA rating, to matter little in the confirmation of appeals court judges.

holding hearings or votes. Likewise, the Senate majority leader holds a great deal of power on when the nomination will receive a floor vote. These opportunities for delaying and defeating nominees have also already been found to have an effect on circuit court and district court nominees (Bell 2002; Binder & Maltzman 2002; Hartley and Holmes 2002; Martinek, Kemper and Van Winkle 2002). Times of divided government were coded 0, and unified government was coded 1.

Presidential Year – Various studies have shown that early in a president’s term, nominees are more likely to be confirmed and that the confirmation will move more swiftly (Allison 1996; Binder & Maltzman 2002; Martinek, Kemper and Van Winkle 2002). To account for any “honeymoon period,” the first year of the president’s term was coded 1, the second 2, the third 3, and the fourth 4. Each term, even for a two-term president, was treated individually and not as a continuation. Hence, year five of the Eisenhower administration was also coded as a 1, year six as a 2, and so on.

Southern States – Pre-dating the Civil War, North-South conflict has played a major role in American politics. This conflict was particularly relevant in the 1950s. During this time period the Supreme Court decided *Brown v. Board of Education* (1954) and Congress passed the first civil rights legislation since Reconstruction (Civil Rights Act of 1957). Further, 19 senators (all Democrats) and 77 representatives signed “The Southern Manifesto” in March of 1956 denouncing the Supreme Court’s decision in *Brown* and the “trend in the Federal Judiciary undertaking to legislate, in derogation of the authority of Congress, and to encroach upon the reserved rights of the States and the people.”

One notable signatory of the manifesto was the newly appointed chairman of the Senate Judiciary Committee, Senator James O. Eastland. Further, with Supreme Court justices passing before it and civil rights legislation generally originating from it, the Senate Judiciary Committee was a primary arena for these conflicts. One might therefore expect, particularly with a Republican president in office and the attention paid to federal judges by the southern democrats, that filling federal judgeships in the south would be especially difficult and contentious. All nominees from a southern state were coded 1 and all others 0.⁴

District/Circuit Court Nominations – Docket differences, their position in the judicial hierarchy, and their wider jurisdictions empower federal appeals court judges to have a greater impact on policy than district court judges (Allison 1996; Martinek, Kemper and Van Winkle 2002; Holmes 2007). Further, whereas senators are often seen as playing the dominant role in selecting district court judges, the president wields much more power in the selection of circuit court judges (Chase 1972; Slotnick 1980; Carp, Stidham and Manning 2007; Rutkus 2008). This includes the ability to select a nominee from another state within a particular circuits jurisdiction when faced with opposition from home-state senators. Therefore, due to their greater importance and the power to select them being more evenly divided, one might expect the confirmation times of

⁴ A state was denoted as southern based on whether both senators signed The Southern Manifesto. This resulted in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia as being designated southern. Senator Price Daniel (D-TX) also signed the manifesto, but Texas was not designated southern due to Senator Lyndon Johnson, as well as over half of the Texas representatives in the House, not signing the manifesto. Also, four representatives from Tennessee signed the manifesto, but neither senator from the state signed it so Tennessee was designated non-southern. Finally, the south/non-south designations of a state by other researchers were similar when compared with the use of the manifesto as a basis (see, Holbrook & McClurg 2005; would like to find one or two more).

appellate judges to be lengthier. District court nominations were coded 0 and appeals court nominations 1.

Renominations - Following Martinek, Kemper and Van Winkle (2002), we treated any renomination of a nominee who failed to be confirmed as a separate event and created a control variable to account for renominated individuals (coded 1 if an individual was renominated, 0 if not). Sollenberger (2003c) contemplates downward skewing problems that may occur due to this method of collection, but notes the rareness of renominations during our time period. This method is further preferable for our analysis as blue slips are sent to each home-state senator for each nomination, not just the initial one.

Political Factors⁵

Home-state Senator Party ID – Senators of the president’s party, based on the norm of senatorial courtesy, are generally consulted prior to a nomination from their state being made. Also, due to the political patronage of the era, senators often had a hand in naming those to be appointed. Finally, as Chase (1972) pointed out, “By and large, the president’s men and the senators, when they are of the same party, want to avoid open conflict” (p. 39). Therefore, it should be less likely for a senator from the president’s party to have reason to delay or defeat a nominee. Further, we would expect nominees with both senators coming from the president’s party to make objection, and hence delay, even less likely. States with both senators coming from the Democratic Party are coded 2 while states with both senators being Republican were coded 0. States with one Republican and one Democratic senator were coded 1.

Judiciary Chair – President Ideological Distance – By rule of the Senate, all federal judicial nominations must be reported to the Senate Judiciary Committee. And, as Sollenberger (2003b) and Rutkus (2008) note, the committee chair wields a great deal of power in establishing and following procedures for the confirmation of judges, including the blue slip. Therefore, the greater the ideological difference between the Chair and the president, the longer a nominee should take to be confirmed. Hartley and Holmes (2002) point out that “. . . individual Judiciary Committee chairs appear to have their own styles or approaches regarding judicial confirmations, at times quite distinct from party control” (p. 277). Their statement highlights both the importance of the chair and the importance of relying on their NOMINATE score and not just their party ID. The absolute value of the difference between the DW-NOMINATE scores of the president and the chair were used to measure ideological distance. For the purposes of our analysis, only the 2nd dimensions were considered.⁶

⁵ Presidential approval ratings were not considered as an independent variable for two reasons. First, Eisenhower was the only president during our analyzed time period. Second, both Binder & Maltzman’s (2002) and Martinek, Kemper and Van Winkle (2002) found presidential approval having no affect on appeals court nominees confirmation time length. Martinek, Kemper and Van Winkle did find an affect on district court nominees, but only at the .10 level of significance.

⁶ Both the 1st and 2nd dimension DW-NOMINATE scores were first considered due to the ambiguity surrounding when one should be used over the other. In fact, we could find no clear reason as to why anyone has used one over the other in his or her research on the Courts. Also, whereas other research on delay has utilized the 1st dimension (see, Binder & Maltzman, 2002), the introduction to the DW-NOMINATE data set seems to indicate the 2nd dimension would be more accurate for our time period. “The 2nd dimension picks up the conflict between North and South on Slavery before the Civil War and from the late 1930s through the mid-1970s, civil rights for African-Americans. After 1980 there is considerable evidence that the South realigns and the 2nd dimension is no longer important” (<http://voteview.com/DWNOMIN.HTM>).

Home-State Senators – President Median Ideological Distance – As noted before, each home-state senator of a nominee is sent a blue slip by which they may, at the very least, delay or defeat a nominee (Slotnick 1980; Goldman 1997; Denning 2002). Logically, the more ideologically distant a senator is from the president, the more likely the senator should be to obstruct the president's nominees via this mechanism. This initial logic has also been supported by research on confirmation rates of appellate court nominees (Binder & Maltzman 2002). Therefore, nominees from a state with a senator ideologically distant from the president should take longer to be confirmed.

In creating this measurement, however, we find a difficulty similar to the one faced in measuring blue slip support scores: two scores for each nominee. We attempt to solve this problem by creating a variable using the median distance of the two home-state senators NOMINATE scores from the president. Therefore, we would expect that, as the median distance between the senators and the president increases, so will delay. The absolute value of the difference between the DW-NOMINATE scores of the president and the home-state senators were used to measure ideological distance. The scores were then divided by two to find the median distance between the home-state senators' and the president's scores. Again, only the 2nd dimension scores were considered.

Methods

Event history models, which are also referred to as duration or survival models, are used to look at the time until an event occurs. In event history, an "event" is the primary phenomenon of interest and the "history of such event" refers to the duration leading up to the event. The timing of occurrences events can provide rich information and thus help to further enhance our understanding of underlying dynamics of interesting political phenomena.⁷

We use the Cox proportional hazards model primarily to avoid making assumptions about the hazard rate. In the Cox mode, the primary assumption to be checked is the proportional hazards assumption. The global statistic developed by Therneau and Grambusch allows us to test this assumption. If the global test indicates the model may have a violation, Harrell's rho can be used to focus in on offending covariates individually. Typically, an interaction with time and the offending covariate is then included in the model to account for the nonproportionality.

Results

The Cox regression models are presented for all three of our dependent variables. Table 2⁸ shows the effects of the independent variables on the time to the first committee hearing, while the effects on the time to committee action of each nominee appear in Table 3, and the time to ultimate confirmation or return by the Senate is displayed in Table 4.⁹

We begin by looking at the effects of the blue slip factors. As expected, objections by home-state senators via negative blue slips increase delay for a nominee at all three stages of the

⁷ See Box-Steffensmeier and Jones (1997; 2004) for further reference.

⁸ The model in Table 2 violates the global test for the violation of the proportional hazards assumption. In addition, the variable measuring the distance between the president and the Judiciary Committee chair appears to violate the assumption (likely leading to the significant result for the global test). An appropriate remedial tool is to re-estimate the model with a variable that includes an interaction between the offending variable(s) and the natural log of time elapsed, then retesting for violations. A model with such an interactive term failed to converge in this case, so the results of the original model are presented here.

⁹ For the models represented in Table 3 and Table 4 there were no violations of the proportional hazards.

confirmation process. For a nominee receiving one negative blue slip, the hazard rate for confirmation time falls approximately 74%. A nominee being objected to by both home-state senators leads to about a 93% reduction in the hazard rate. Next, it appears our hypothesis of a positive role for the blue slip in the confirmation process can be rejected as the *positive* blue slip variable was not statistically significant. Further, given the negative coefficient for the *positive* blue slip variable for the committee and confirmation dependent variables, it appears that positively returned blue slips may in fact slow down the committee final confirmation processes.

Table 2
Cox Regression of District and Circuit Court Time to First Hearing, 1953-1958

Variable	Coefficient	P>z
<i>Positive blue slips</i>	.106 (.205)	.605
<i>Negative blue slips</i>	-.855 (.371)	.021
<i>Divided/Unified government</i>	1.164 (.252)	.000
<i>Presidential year</i>	.078 (.150)	.604
<i>Southern states</i>	-.244 (.428)	.569
<i>District/Circuit Court</i>	-.568 (.275)	.039
<i>Renominations</i>	-.326 (.483)	.500
<i>Home-state senators party id</i>	.282 (.220)	.199
<i>Chair-president distance</i>	.781 (.387)	.044
<i>Home-state senators-president median dist.</i>	.248 (.367)	.498

However, we are not completely inclined to reject our positive blue slip hypothesis. This is due to the fact that it appears that our models, due to smaller sample sizes, may be skewed by four particularly lengthy nominations that received two positive blue slips: the nominations of John S. Hastings (161 days to confirmation), Joe McDonald Ingraham (88 days), John A. Danaher (78 days), and John W. McIlvaine (70 days). Of further interest is that three of these nominations come from states with two Republican senators. Historical accounts of the era point to two of these nominations (Hastings and McIlvaine) as sources of serious conflict between either the two Republican senators or the senators and the president (Chase 1972; Goldman 1997). Hence, even though the nominations received positive blue slips, it is clear that at least one or both of the home-state senators involved were not supporting these two nominees. Although there is not strong enough evidence available to accept the positive blue slip hypothesis, its outright rejection at this time would appear premature.

With regards to contextual factors, two variables confirm previous research findings and our hypotheses, while one contradicts other findings and one failed to achieve significance (our *southern* variable). Building on previous research, whether the federal government is unified has a statistically significant effect (at the .01 level) on confirmation rates. In times of unified government, we see the hazard rate increase almost 98%. Interestingly, this general effect (and not the specific percentage change in the hazard rate) also holds true for hearing and committee action times. Also, whether a nomination is made to a district or circuit court also effects duration times, with circuit court nominees experiencing an increase in delay, across all three dependent variables.

The *presidential year* variable yielded particularly interesting results. Although only significant at the .10 level for the time to confirmation model, it is the direction of the effect that is most interesting. As noted earlier, previous research described a “honeymoon period” early in a presidential term, but our results seem to indicate that the further along in a president’s term a nomination is made, the quicker the nominee moves through the various stages of confirmation. A primary reason for this may be that while other research analyzed time periods that stretched

across multiple presidencies, ours only encapsulated Eisenhower's. This may signify that while, generally speaking, presidents have experienced a honeymoon period, this does not hold true for *all* presidents. Further research comparing the presidential year variable for multiple presidents should be considered in order to determine the efficacy of the honeymoon period hypothesis.

Table 3
Cox Regression of District and Circuit Court Time to Committee Action, 1953-1958

Variable	Coefficient	P>z
<i>Positive blue slips</i>	-.245 (.192)	.200
<i>Negative blue slips</i>	-1.327 (.493)	.007
<i>Divided/Unified government</i>	.564 (.235)	.016
<i>Presidential year</i>	.199 (.147)	.178
<i>Southern states</i>	-.076 (.406)	.851
<i>District/Circuit Court</i>	-.550 (.257)	.032
<i>Renominations</i>	-.007 (.384)	.986
<i>Home-state senators party id</i>	-.371 (.196)	.059
<i>Chair-president distance</i>	1.223 (.375)	.001
<i>Home-state senators-president median dist.</i>	.594 (.333)	.075

Next, the political factors considered yielded many counterintuitive results that appear to indicate ideology plays a greater role in affecting delay than party identification. First, as expected, the presence of two Democratic senators increases the delay a nominee experiences. However, we find that as the median ideological distance between the home-state senators and the president on civil rights issues increases, confirmation time and time to committee action decrease. One would expect the variables describing partisanship and ideology to be correlated. Further, the ideology coefficient is larger than that of the party identification. These findings may indicate a very unique dynamic at work between partisanship and ideology during the Eisenhower administration.

Table 4
Cox Regression of District and Circuit Court Time to Confirmation, 1953-1958

Variable	Coefficient	P>z
<i>Positive blue slips</i>	-.285 (.191)	.136
<i>Negative blue slips</i>	-1.357 (.493)	.006
<i>Divided/Unified government</i>	.683 (.234)	.004
<i>Presidential year</i>	.271 (.146)	.063
<i>Southern states</i>	-.030 (.409)	.941
<i>District/Circuit Court</i>	-.494 (.256)	.054
<i>Renominations</i>	-.100 (.381)	.800
<i>Home-state senators party id</i>	-.419 (.195)	.032
<i>Chair-president distance</i>	1.251 (.374)	.001
<i>Home-state senators-president median dist.</i>	.648 (.331)	.050

Also of a counterintuitive nature is the relationship between delay and the ideological distance between the president and the Judiciary Committee chair on civil rights issues. We expected that given the chair's power over nominations, delay would increase as the distance

between the 2nd dimension NOMINATE scores increased. We found, however, that the opposite occurred. Not only that, but the relationship between the two produced the second largest coefficient of all the independent variables considered. Further, moving from the chair ideologically closest to the president (Senator Kilgore) to the ideologically furthest chair (Senator Eastland) increased the hazard rate by 229%. This finding may indicate that, given an ideologically distant Judiciary Committee chair, a president avoids nominating those candidates the chair is sure to find objectionable. Another plausible argument may be that some Judiciary Committee chairs are more efficient in dealing with judicial nominations than others. Whatever the case, the findings clearly seem to indicate that the chairman of the Judiciary Committee clearly plays an important role in predicting any delay a nominee might face.

Finally, we find little difference with how the variables affect delay across the three time periods studied. Most variables that significantly affected confirmation time also affected the time to the first hearing and the time to committee action. However, both the median home-state senator ideological distance from the president variable and the party identification variable failed to achieve significance in the time to hearing model. Therefore, while many factors do increase or decrease the time it takes for a nominee to receive a hearing, the party and ideology of the home-state senators does not appear to contribute in either way.

Conclusions

The blue slip has been a functioning norm of the Senate Judiciary Committee for at least 90 years. Although the amount of power each senator has via the blue slip has ebbed and flowed over various times in history, it clearly was, and probably still remains, an effective tool by which senators may delay the confirmation of a federal judicial nomination from their state. As at the time Deputy AG Warren Christopher noted in 1968, “[T]he views of any senators, whatever his Party, from the state where the vacancy exists cannot be ignored, for Senate tradition gives them a virtual right of veto” (Goldman 1997, 10).

Through our research, descriptive and anecdotal accounts of the blue slip have now been supported by a systematic analysis of the blue slip in relation to how long a nomination takes to progress through the stages of the confirmation process. Additionally, our models have successfully integrated a previously unaccounted for, and statistically significant, variable into the quantitative study of the confirmation of judicial nominees. Our analysis also creates a basis by which, given access to the necessary files, future research can analyze the impact of the blue slip over time, i.e., across Congresses, presidencies, or Judiciary Committee chairs. Such analyses could yield vital clues as to when, how, and why the blue slip has evolved as a senatorial norm.

Our research and findings are perhaps most interesting in what they may tell us about the role of the Judiciary Committee chair. First, the chair wields a great deal of power in adapting the blue slip based on personal policy goals, but is only likely to exercise this power given the occurrence of a political crisis and the distribution of political power between the Senate and the White House. Second, although the chair may be ideologically distant from the president, ideological differences do not necessarily translate into delay with regards to confirming federal judges. Finally, some committee chairs may simply be more adroit at dealing with the business of their committees.

Lastly, our findings indicate that while many variables impact confirmation time across eras, some variables, such as the “honeymoon period,” may not be operative for all presidencies or Congresses. We suggest that analyses spanning longer periods may want to consider also breaking results down into smaller time segments. This approach could offer the dual benefits of guarding against over generalizations as well as allowing researchers to analyze how different variables impacts have waxed or waned over time.

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Figure 1: Example of a Negatively Returned Blue Slip

United States Senate
COMMITTEE ON THE JUDICIARY

OFFICE OF
RECEIVED
APR 1 1954
SENATOR DUFF

March 30, 1954


Dear Senator:

Will you kindly give me, for the use of the Committee, your opinion and information concerning the nomination of

Francis L. Van Dusen, of Pennsylvania, to be United States district judge for the eastern district of Pennsylvania, vice Guy K. Bard, resigned

Under a rule of the Committee, unless a reply is received from you within a week from this date, it will be assumed that you have no objection to this nomination.

Respectfully,


Chairman.

To Hon. James H. Duff
U. S. Senate

REPLY

Objection is hereby filed to the above nomination.

Thos. W. Lusk

GPO 35573

REC'D APR 8 1954

Figure 2: Example of Blue Slip “No Objection”

130

United States Senate
COMMITTEE ON THE JUDICIARY

July 24, 1953

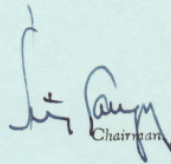
Dear Senator:

Will you kindly give me, for the use of the Committee, your opinion and information concerning the nomination of

Harlan Hobart Grooms, of Alabama, to be United States district judge for the northern district of Alabama, vice Clarence Mullins, retired

Under a rule of the Committee, unless a reply is received from you within a week from this date, it will be assumed that you have no objection to this nomination.

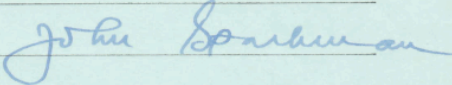
Respectfully,


Chairman

To Hon. John Sparkman
U. S. Senate

REPLY

I have no objection to this nomination.



REC'D JUL 29 1953

Figure 3: Example of Blue Slip “Approve”

MAR 9 1956

United States Senate
COMMITTEE ON THE JUDICIARY

March 6, 1956

Dear Senator:

Will you kindly give me, for the use of the Committee, your opinion and information concerning the nomination of

Stanley N. Barnes, of California, to be United States circuit judge, ninth circuit, vice William E. Orr, retired

Under a rule of the Committee, unless a reply is received from you within a week from this date, it will be assumed that you have no objection to this nomination.

Respectfully,

James O. Eastland
Chairman.

To Hon. William F. Knowland
U. S. Senate

REPLY

I approve

William F. Knowland USS California

GPO 30573

Figure 4: Example of Blue Slip “Strongly Approve”

United States Senate
 COMMITTEE ON THE JUDICIARY
 SENATE BUILDING
 WASHINGTON, D. C.

March 7, 1955

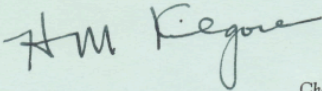
Dear Senator:

Will you kindly give me, for the use of the Committee, your opinion and information concerning the nomination of

Warren L. Jones, of Florida, to be United States circuit judge,
 fifth circuit, vice Louie W. Strum, deceased

Under a rule of the Committee, unless a reply is received from you within a week from this date, it will be assumed that you have no objection to this nomination.

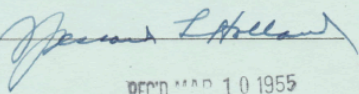
Respectfully,


 Chairman.

To Hon. Spessard L. Holland
 U. S. Senate

REPLY

Mr Jones is a scholarly lawyer of very high type,
 personally and professionally. He has served ably as
 President of the Florida State Bar Assoc. and in
 other representative ^{non-part} positions of trust. I think he will
 make an excellent judge.


 REC'D MAR 10 1955

